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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~422~~. 148

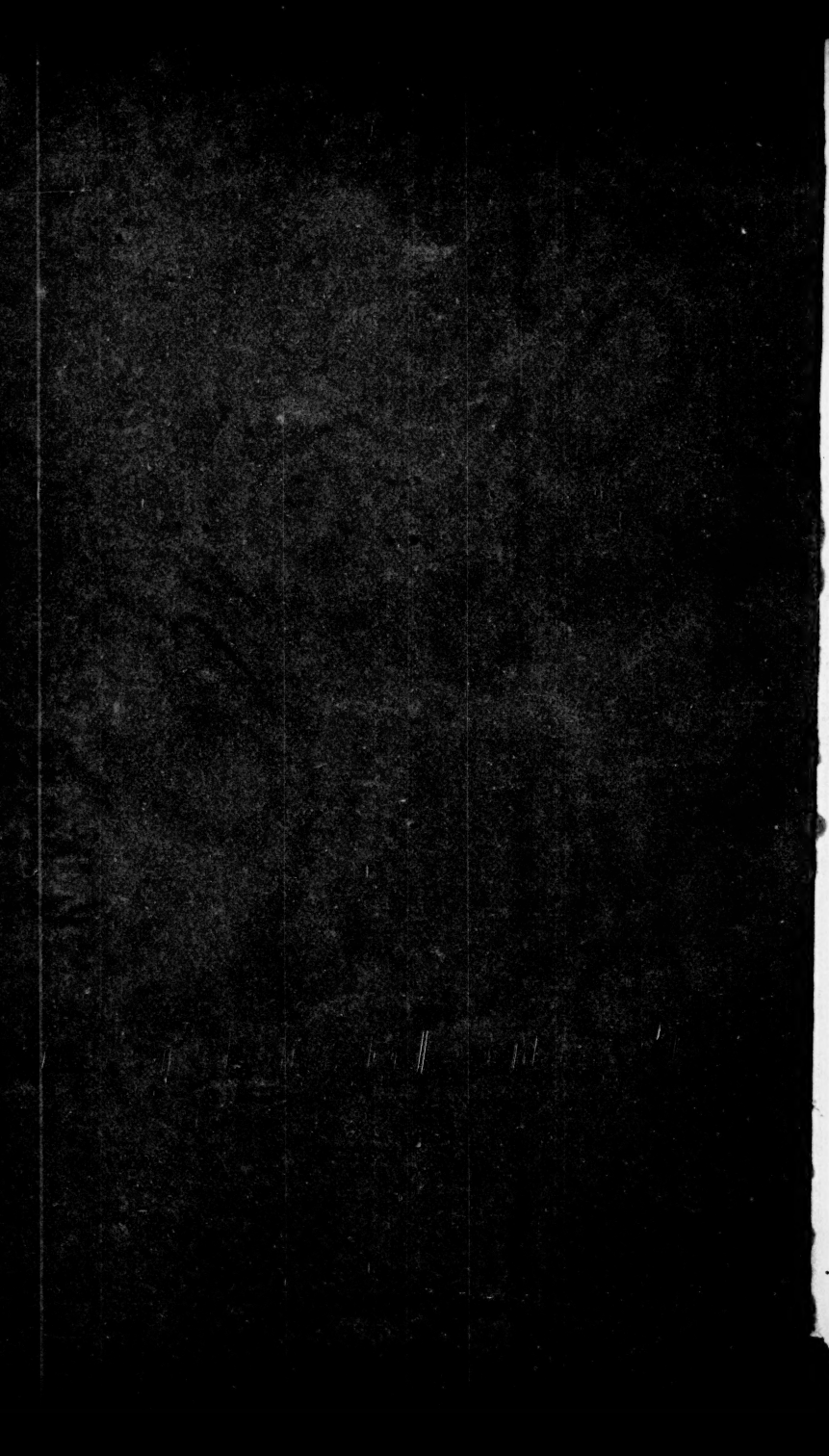
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS FOR THE DISTRICT OF PHILADELPHIA, PLAINTIFF IN ERROR,

vs.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, TRADING AS MEYER AND DICKINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 11, 1886.



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1 UNITED STATES,
*Eastern District of Pennsylvania, sct.:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, plaintiffs, and John F. Hartranft, collector of customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened, to the great damage of the said John F. Hartranft, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 21st day of July, A. D. one thousand eight hundred and eighty-six, and in the one hundred and eleventh year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
*Clerk of Circuit Court U. S.*

2 THE UNITED STATES OF AMERICA, *ss:*

To Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the Eastern district of Pennsylvania, in the third circuit, wherein John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 21st day of July, in the year of our Lord one thousand eight hundred and eighty-six.

WM. BUTLER,
*Judge.*

I accept service of the above writ and request the clerk to enter my appearance as attorney for defendants in error.

FRANK P. PRICHARD,
*Att'y for Def'ts in Error.*

JULY 22, 1886.

3 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit.

CHARLES H. MEYER AND JOSEPH R. DICKINSON, trading as Meyer and Dickinson,
*vs.*
JOHN F. HARTRANFT, COLLECTOR OF CUSTOMS for the district of Philadelphia.

UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania, ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1885, No. 55.

It is thus contained:

Be it remembered that on the 28th day of December, A. D. 1885, the defendant, by his attorney John K. Valentine, esq., appears in open
4 court and presents petition for certiorari, which being read is in the words following, to wit:

5 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

The petition of John F. Hartranft, late collector of customs for the district of Philadelphia, respectfully represents that a suit has been commenced by summons case against him as defendant by Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, in the court of common pleas No. 3 for the county of Philadelphia in the State of Pennsylvania, to December term, 1885, No. 120.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of the customs for the district of Philadelphia, the said suit being to recover a certain sum of money paid for and on account of the said plaintiffs to the said defendant as collector aforesaid, as duties on certain merchandise.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas No. for the county of Philadelphia, to send to the said circuit court of the United States the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

J. F. HARTRANFT,
*Late Collector.*

John F. Hartranft being duly sworn says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

J. F. HARTRANFT.

Sworn and subscribed before me this 23d day of Dec'r, 1885.

[SEAL.] EDW'D L. BUCHEY,
*Not. Pub.*

I hereby certify that as counsel for the above petitioner I have examined the proceedings against him and carefully enquired into all the matters set forth in the above petition and that I believe the same to be true.

JOHN K. VALENTINE,
*Att'y for Def't.*

6 (Indorsed:) No. 55, October sessions, 1885. Circuit court, United States, eastern district of Pennsylvania, in the third circuit. Charles H. Meyer et al. vs. John F. Hartranft, late collector, &c. Petition for certiorari. John K. Valentine, attorney for petitioner. Filed December 28, 1886.

7 Whereupon the court made the following order, to wit:

MEYER ET AL.
*v.*
HARTRANFT, LATE COLLECTOR. } No. 55. October sess., 1885.

And now, to wit, this 28th day of December, A. D. 1885, on motion of Henry P. Brown, esq., assistant United States attorney, a writ of certiorari is allowed in the above cause for its removal from the court of common pleas for the county of Philadelphia to this court.

Thereupon a writ of certiorari issues in the words following, to wit:

8 UNITED STATES OF AMERICA,
*Eastern district of Pennsylvania, sct.:*

The President of the United States to the honorable the judges of the court of common pleas No. 3 for the county of Philadelphia, in the State of Pennsylvania, greeting:

Whereas lately in your said court of common pleas No. 3 a suit was commenced against John F. Hartranft, late collector of customs for the district of Philadelphia, by Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, to your December term, 1885, No. 120, which said suit, as it is said, is still pending before you in the said court of common pleas No. 3, undetermined; and whereas on the application of the said John F. Hartranft, late collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him under color of his office as collector of customs for the district of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiffs to the said John F. Hartranft, late collector, &c., aforesaid, for duties on certain merchandise claimed to be due and owing from the said plaintiffs to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said court of common pleas No. 3, to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress in such case made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the

first Monday of January next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 28th day of December, A. D. 1885, and in the 110th year of the Independence of the United States.

SAMUEL BELL,
*Clerk of Circuit Court, U. S.*

9 (Indorsed:) No. 55. October sess., 1885. Circuit court U. S. Meyer et al. vs. Hartranft, late collector. Writ of certiorari.

10 And afterwards, to wit, on the 31st day of December, A. D. 1885, the writ of certiorari is returned with the record of the court of common pleas No. 3 annexed, which, being read, is in the words following, to wit:

11 *Exemplification.*

PHILADELPHIA COUNTY,
*State of Pennsylvania, set.:*

Among the records and proceeding of the court of common pleas No. 3, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 120, December term, 1885, to wit:

*Docket entries, December term*, 1885.

| | | |
|---|---|---|
| F. P. Prichard | CHARLES H. MEYER and Joseph R. Dickinson, trading as Meyer & Dickinson, *vs.* JOHN F. HARTRANFT, late collector of customs for the district of Philadelphia. | Sum's case, exit Nov. 20, 1885; ret. 1 Mon. Dec., 1885. Nihil habet. Dec. 15, 1885, als. sum's exit; ret. 1 Mon. Jan., 1886. Served Dec. 29, 1885. Certiorari from circuit ct. of U. S. for E. D. of Penna. (of Oct. sess., 1885, No. 55) bro't into office. |
| 120. J. K. Valentine Dec. 22, '85. | | |

Certified from the record 12, 29, '85.
[SEAL.]

F. J. LINDSAY,
*Pro Proth'y.*

12 CHARLES H. MEYER AND Joseph R. Dickinson, trading as Meyer and Dickinson, *vs.* JOHN F. HARTRANFT, LATE COLLECTOR of customs for the district of Philadelphia. | C. P. No. Dec. T., 1885. No.

Issue summons case as above, returnable first Monday December, 1885. To proth'y C. P.

FRANK P. PRICHARD,
*Att'y for Pl'ffs, Nov.* 20, 1885.

(Endorsed:) 120. Dec. term, 1885. C. P. No. 3. Meyer and Dickinson vs. Hartranft, collector. Præcipe for sum's case. Filed Nov. 20, 1885. F. P. Prichard.

13 *Summons.*

COUNTY OF PHILADELPHIA, *ss.*

The Commonwealth of Pennsylvania, to the sheriff of Philadelphia county, greeting:

We command you, that you summon John F. Hartranft, late collector of customs for the district of Philadelphia, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas, No. 3, for the county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of December next, there to answer Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, of a plea of trespass on the case, etc. And have you then there this writ.

Witness, the honorable James R. Ludlow, president of our said court, at Philadelphia, the 20th day of Nov'r, in the year of our Lord one thousand eight hundred and eighty-five.

GEO. W. HAMMERSLY,
*Pro. Prothonotary.*

14 (Indorsed:) 120. Dec. term, 1885. C. P. No. 3. Meyer and Dickinson vs. J. F. Hartranft. Summons case. F. P. Prichard.

Nihil habet; so answers.

A. ALBRIGHT,
*Dep. Sh'ff.*
GEO. DE B. KIEM.
*She'ff.*

15 CHARLES H. MEYER ET AL.
*vs.*
JOHN H. HARTRANFT, LATE COLLECTOR, &c. } C. P. No. 3. Dec. term 1885. No. 120.

Issue alias summons case in above case. Returnable first Monday, January, 1886.

FRANK P. PRICHARD,
*Att'y for Pl'ffs.*

To Prothy, C. P.

(Endorsed:) 120. Dec. term, 1885. C. P. No. 3. Meyer et al. vs. Hartranft. Præcipe for als. sum's case. Filed Dec. 15, 1885. F. P. Prichard.

16 *Summons.*

COUNTY OF PHILADELPHIA, *ss*:

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, greeting:

We command you, as before we did, that you summon John F. Hartranft, late collector of customs for the district of Philadelphia, late of your

county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas, No. , for the county of Philadelphia, to be holden at Philadelphia, in and for said county of Philadelphia, the first Monday of January next, there to answer Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, of a plea of trespass on the case, etc. And have you then there this writ.

Witness, the honorable James R. Ludlow, president of our said court, at Philadelphia, the 15th day of Dec. in the year of our Lord one thousand eight hundred and eighty-five.

W. MAC CAIN,
*Pro. Prothonotary.*

17 (Indorsed:) 120. Dec. term, 1885. C. P. No. 3. C. H. Meyer et al. vs. John F. Hartranft. Als. summons case. F. P. Prichard.

Served John F. Hartranft by giving to him, December 18th, 1885, a true and attested copy of the within writ and making known to him the contents thereof.

So answers.

A. ALBRIGHT,
*Deputy Sheriff.*
GEO. DE B. KEIM,
*Sheriff.*

18 CHARLES H. MEYER ET AL. *vs.* JOHN F. HARTRANFT, LATE COLLECTOR, &C. } C. P. No. 3. Dec. term, 1885. No. 120.

The Proth'y will enter my appearance in the above case for the defendant.

JOHN K. VALENTINE,
*Att'y for Def't.*

To Prothy, C. P.

(Endorsed:) 120. Dec. term, 1885. C. P. No. 3. Charles H. Meyer et al. vs. John F. Hartranft, late collector. Order for appearance. Filed Dec. 22, 1885. J. Kinderdine. John K. Valentine, att'y for def't.

19 And afterwards, to wit, on the 5 day of January, A. D. 1886, the plaintiffs, by their attorney, come into court here and files his narr., which, being read, is in the words and figures following, to wit:

20 In the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit of October session, one thousand eight hundred and eighty-five. No. 55.

EASTERN DISTRICT, *ss:*

John F. Hartranft, late collector of customs for the district of Philadelphia, late of the county aforesaid, was summoned to answer Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, of a plea of trespass on the case, &c., whereupon the said Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson, by Frank P. Prichard, their attorney, complain.

21 And also, for that whereas the defendant on the first day of November in the year of our Lord, one thousand eight hundred and eighty-five, at the county aforesaid, was indebted to the plaintiffs in fifty thousand dollars for goods then and there sold and delivered by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for goods then and there bargained and sold by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for work then and there done, and materials for the same provided by the plaintiffs for the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there lent by the plaintiffs to the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there paid by the plaintiffs for the use of the defendant at his request;

And also in the further sum of fifty thousand dollars, for money then and there had and received by the defendant for the use of the plaintiffs;

And also in the further sum of fifty thousand dollars, for money found to be due from the defendant to the plaintiffs on an account then and there stated between them;

And also in the further sum of fifty thousand dollars, for interest then and there due and payable, for the forbearance by the plaintiffs at the defendant's request, for moneys before then due and owing from the defendant to the plaintiffs.

And the defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the several last mentioned premises, respectively then and there promised the plaintiffs to pay them the said several last mentioned moneys, respectively, on request; yet the defendant hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the damage of plaintiffs fifty thousand dollars.

And therefore they bring suit, &c.

FRANK P. PRICHARD,
*Attorney for Plaintiff.*

DEC. 10, 1885.

22 (Indorsed:) U. S. C. C. E. D. of Pa. 55. Oct. sess., 1885. Charles H. Meyer et al. vs. John F. Hartranft, late collector, &c. Narr. in assumsit. F. P. Prichard, plaintiff's attorney. Filed Jan. 5, 1886.

23 And afterwards, to wit, on the 15th day of January, A. D. 1886, the defendant, by his attorney, comes into court here and files his plea, which, being read, is in the words following, to wit:

In the circuit court of the United States for the eastern district of Pennsylvania in the third circuit. Oct. sessions, 1885. No. 55.

CHARLES H. MEYER ET AL.
*vs.*
JOHN F. HARTRANFT, LATE COLLECTOR, &C.

And the said defendant, by John K. Valentine, esquire, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did

not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

JOHN K. VALENTINE,
*Attorney for Defendant.*

24 (Indorsed:) No. 55. Oct. sessions, 1885. In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit. Charles H. Meyer et al. vs. John F. Hartranft, late collector, &c. Filed Jan. 15, 1886. Plea of defendant. John K. Valentine, attorney for defendant.

25 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 20th day of April, A. D. 1886, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come, to wit, David M. Jaquette, James A. Wright, Albert Pancoast, Henry E. Drayton, J. Frank Werner, Thomas J. Ridgway, J. Ross Hanson, William Laumaster, Van Camp Bush, Alexander Orr, J. Edward Crippen, Edward R. Hayes, who are duly empaneled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the 20th day of April, A. D. 1886, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find specially as follows, to wit:

26 U. S. C. C., Oct. sess., 1885.

MEYER *vs.* HARTRANFT. } No. 55.

*Special verdict.*

The jury find that:—

1. That in the year 1885 the plaintiffs were merchants in the city of Philadelphia, and the defendant was collector of the customs for the district of Philadelphia.

2. That the plaintiffs imported into the port of Philadelphia, between June 25, 1885, and July 16, 1885, both inclusive, various lots of matelasse cloth, which were duly entered at the custom-house.

3. That all of said matelasse cloth was composed partly of silk, partly of cotton, and partly of wool; silk being the component material of chief value, and the proportion in value of wool being less than 25 per cent.

4. That the defendant, as collector aforesaid, exacted duty on all of said matelasse cloth at the rate of thirty-five cents per pound, and forty per cent. ad valorem, amounting to the sum of two thousand four hundred and sixty-eight dollars, which duty was paid by the plaintiffs at the time, making due protest against the exaction thereof, and claiming that said matelasse cloth was dutiable at the rate of fifty per cent. ad valorem.

5. That the plaintiffs made due appeals from said decisions of said collector to the Secretary of the Treasury, who, by decisions in writing affirmed the said decisions of the defendant, whereupon the plaintiffs, on November 20, 1885, brought this suit.

27 6. That a bill of particulars is hereto annexed, showing the respective dates of the invoices of said matelasse cloth and of the entries at the custom house, the payment of duties in excess, the filing of protest, the appeal to the Secretary of the Treasury and the Secretary's decision, and showing also the amount of duties claimed by plaintiffs to have been illegally exacted.

7. That the duty on the said matelasse cloth, at the rate of fifty per cent. ad valorem, is the sum of eighteen hundred and fifty-two dollars, forty cents. The amount of duty thereon exacted by the defendant and paid by the plaintiffs under protest, is two thousand four hundred and sixty-eight dollars. The amount exacted by the defendant over and above the amount claimed to be done by plaintiffs is the sum of six hundred and fifteen dollars and sixty cents.

And the said jurors say that they are ignorant in point of law on which side they ought, upon the facts, to find the issue; but that if the court should be of opinion that the plaintiffs are entitled to recover the money paid as duty on the said matelasse cloth, over and above the amount claimed to be due by said plaintiffs, then they find for said plaintiffs in the sum of six hundred and fifteen dollars and sixty cents with interest to be computed upon the separate items thereof, from the respective dates of payment as shown by the annexed bill of particulars, but if the court should be of opinion that the plaintiffs are not entitled to recover upon the facts and law then they find for defendant.

The bill of particulars showed the following payments of duty:

| | |
|---|---|
| Aug. 1, 1885 | $35.70 |
| Sept. 10, 1885 | 93.75 |
| Sept. 10, 1885 | 486.15 |
| | $615.60 |

28 *Bill of particulars.*

Name of importer (for all the importations), Meyer & Dickinson.

*Description of goods: Matelasse cloths.*

| Name of vessel. | Whence imported. | Date of invoice. | Amount of duty illegally exacted. | Date of entry at custom-house. | Date of payment of duties in excess. | Protest filed. | Date of appeal to Secretary of the Treasury. | Date of Secretary's decision. |
|---|---|---|---|---|---|---|---|---|
| | | 1885. | | 1885. | 1885. | 1885. | 1885. | 1885. |
| Pennland | Antwerp | June 15 | $486.15 | July 11 | Sept. 10 | July 24 | July 24 | Sept. 3 |
| Switzerland | " | " 22 | 93.75 | " 16 | " | " " | " " | " " |
| Belgenland | " | " 1 | 35.70 | June 25 | Aug. 1 | " " | " " | " " |
| | | | 625.60 | | | | | |

29 And afterwards, to wit, on the 21st day of June, A. D. 1886, come the parties aforesaid, and this cause being called for argu-

ment on special verdict, and having been argued by counsel for the respective parties, and the premises being seen and fully understood by the court, they take further time for consideration.

And afterwards, to wit, on the 24th day of June, A. D. 1886, the court by Hon. William McKennan, circuit judge, file the following opinion, to wit:

30 In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

MEYER
*vs.*
HARTRANFT, COLLECTOR, &C. } No. 55, October session, 1885.

MCKENNAN, *Cir. J.:*

The special verdict in this case presents a single question for determination, viz: Are the goods described in it dutiable under Schedule K (section 2502), of the act of March 3, 1883, or under Schedule L of the same act.

These schedules are parts of the same act and presumably were not intended to impose different rates of duty upon the same subjects. Schedule K imposes a certain rate of duty upon "all manufactures of wool of every description made wholly or in part of wool, not specially enumerated or provided for" in the act. This is a very general
31 and comprehensive description, and undoubtedly embraces all goods of which wool is in part a constituent. But are the goods in question excluded from its scope by being specially provided for in another part of the act? I think they are by the terms of Schedule L. That schedule imposes a different rate of duty "on all goods, wares, and merchandise * * made of silk, or of which silk is the component material or chief value." It is clear that silk goods are chargeable only with the duty enacted by this schedule and it is equally clear that goods of which silk is the component material of chief value are placed in the same category and are subject to the same duty. It does in times and effect identify goods of which silk is the component material of chief value with goods composed entirely of silk, and is a special provision touching such goods, and withdraws them entirely from the operation of Schedule K.

32 In Soloman v. Arthur, 12 Otto, 212, the applicability of two general clauses in different acts of Congress was before the court for determination. The court held that they were to be considered as contained in the same act, Mr. Justice Bradley, in delivering the opinion of the court, saying: "It is observable that this description of 'manufacture made of mixed materials, in part of cotton, silk,' &c., is more general than that of manufactures which silk is the component material of chief value." Logically, the two phrases standing together in the same act or system of laws would be related as follows: "Goods made of mixed materials, cotton, silk, &c., shall pay a duty of thirty-five per cent.;" but if silk is the component part of chief value they should pay a duty of fifty per cent.

So here, while the presumption is against a construction which would make different clauses of act, imposing different rates, applicable to

33 the same subjects, yet, even if by the generality of their terms, they might apparently be so applicable, they are to be read thus: All manufactures of wool of every description, not especially enumerated or provided for in this act, shall be subject to a duty of thirty-five cents per pound and thirty-five per centum ad valorem; but if silk is the component material of chief value they shall be subject to a duty of fifty per cent. ad valorem."

I am therefore of opinion that the goods described in the special verdict are dutiable under Schedule L of the act of March 3, 1883, and that judgment must be entered thereon in favor of the plaintiff in the sum of $615.60, with interest upon the separate items thereof from the respective dates of payment as shown by the bill of particulars, annexed to said verdict.

And it is ordered that judgment be entered accordingly by the clerk for the amt. of said principal and interest.

34 (Endorsed:) No. 55, October, 1885, C. C. U. S., E. D. of Pa. Meyer vs. Hartranft, col. Opinion and judg't. Filed 24 Jun', 1886.

Whereupon judgment is entered on the special verdict in favor of plaintiffs in the sum of six hundred and forty-four dollars and ninety-nine cents ($644.99).

35 UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania, sct.:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Charles H. Meyer et al. vs. John F. Hartranft, collector, &c., No. 55, October sessions, 1885, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia this 20th day of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[SEAL.] SAMUEL BELL,
*Clerk of C. C.*

(Indorsed:) No. Sessions 188 . Circuit court United States, eastern district of Pennsylvania. Certified copy.

(Stamp:) Office Solicitor Treasury. Received Sep. 23, '86.

36 *In error.*

Supreme Court of the United States.

JOHN F. HARTRANFT, PLAINTIFF IN ERROR,
*vs.*
CHARLES H. MEYER ET AL., DEFENDANTS IN error.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said plaintiff, by John K. Valen-

tine, esq., his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the said record it appears that the judgment aforesaid given was given for the said defendants against the said plaintiff, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants; and the said plaintiff prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may
37 be restored to all things which he has lost by occasion of the said judgment, &c.

JOHN K. VALENTINE,
*Attorney for Pl'ff in Error.*

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(Indorsement on cover:) No. 422. John F. Hartranft, collector of customs for the district of Philadelphia, plaintiff in error, vs. Charles H. Meyer and Joseph R. Dickinson, trading as Meyer and Dickinson. E. Peunsylvania, C. C. U. S. Filed October 11, 1886.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1889.

HARTRANFT'S ADMINISTRATRIX, plaintiff in error, *vs.* CHARLES H. MEYER AND JOSEPH R. Dickinson. } No. 148.

**IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.**

**BRIEF FOR THE PLAINTIFF IN ERROR.**

WM. A. MAURY,
*Assistant Attorney-General.*

# In the Supreme Court of the United States.

OCTOBER TERM, 1889.

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HARTRANFT'S ADMINISTRATRIX,
plaintiff in error,
*vs.*
CHARLES H. MEYER AND JOSEPH R. DICKINSON.

No. 148.

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**IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.**

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**BRIEF FOR THE PLAINTIFF IN ERROR.**

This is an action to recover back the amount of $615.60, alleged to have been illegally exacted by the defendant's testator, late collector of the port of Philadelphia, in the name of duties on certain lots of matelassé cloth imported on June 25, 1885, and July 16, 1886.

The case was tried on the general issue on April 20, 1886, and the jury rendered a special verdict (p. 8).

It appears by the special verdict (pp. 8–9) that the merchandise in question "was composed partly of silk, partly of cotton, and *partly of wool*, silk being the component material of chief value, and the proportion in value of wool being less than 25 per cent."

It further appears that the duty levied was at the rate of 35 cents per pound and 40 per cent. ad valorem, amounting to the sum of $2,468, which was paid under the protest and claim that the merchandise was dutiable at the rate of 50 per cent. ad valorem, and that the difference between the amount of duty levied and the amount claimed to be due by the importers is $615.60, the amount sued for.

The circuit judge entered judgment on the verdict for the amount claimed by the plaintiffs (p. 11).

### ASSIGNMENT OF ERROR.

The judgment is erroneous, in this that it should have been entered for the collector, the assessment of the duties having been in accordance with law.

ARGUMENT.

The collector, in assessing the duties, proceeded on the following provision of Schedule K of the act of 1883 (T. I. 362).

> Woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in this act, valued at not exceeding eighty cents per pound, thirty-five cents per pound and thirty-five per centum ad valorem; valued at above eighty cents per pound, thirty-five cents per pound, and in addition thereto forty per centum ad valorem.

The importers claimed that the assessment should have been made under the provision of Schedule L of the same act (T. I., 383), which is in these words:

> All goods, wares, and merchandise, not specially enumerated or provided for in this act, made of silk, or of which silk is a component material of chief value, fifty per centum ad valorem.

It is found that the proportionate value of the wool that entered into the texture of the merchandise was less than 25 per cent., and that silk was the component material of chief value in said merchandise.

The duty laid on manufactures wholly or in part of wool by Schedule K, above quoted, does not apply to such manufactures as are "SPECIALLY *enumerated or provided for in this act,*" and the

court below held that, by virtue of these words and the provision of Schedule L laying a duty of 50 per cent. on all goods made wholly of silk or of which silk is the component material of chief value, the merchandise in question was taken out of the operation of the wool provision of Schedule K.

But it is conceived that in making that ruling the learned court below was not sufficiently attentive to the language of the law.

If Congress had said that it was not its purpose to lay a tax under the wool provision in Schedule K in any case of a fabric wholly or partially made of wool and otherwise enumerated or provided for in the act, it might have been speciously contended that the importations in question were dutiable at 50 per cent. ad valorem under the silk clause in Schedule L.

But such is not the language of the law, which, after levying a tax on manufactures of wool "*of every description,*" excepts such as are "*specially enumerated or provided for in this act.*" It was, therefore, error in the court below to hold that the general language of the silk clause of Sched-

ule L, which language is merely descriptive of a large class of goods, variously named in commerce, is a *special enumeration and provision* within the meaning of the wool clause of Schedule K.

The ruling of the court below fails to give any significance whatever to the word "*specially*" as used in the wool clause. Congress says that it is only by *special* enumeration or provision that a fabric shall escape the tax levied in Schedule K, but the court below has said that the enumeration or provision needed only to be *general*, and not at all specific or denominative.

We look in vain for any indication that the attention of the learned court below was directed to the special language of the statute, which it interpreted as though it were the common formula "*not otherwise provided for.*"

The difference between a special and a general designation or enumeration is observed by this court where it says, in *Arthur* v. *Butterfield* (125, U. S. 76), with reference to what is called the similitude clause, that to place articles among those designated as enumerated, it is not neces-

sary that they should be *specifically mentioned.* It is sufficient that they are designated in any way to distinguish them from other articles. Thus the words "manufactures of which steel is a component part" and "manufactures of which glass is a component part" have been held a sufficient designation to render the goods enumerated articles under the statute, and take them out of the similitude clause (*Arthur* v. *Sussfield*, 96 U. S., 128).

But it would seem that such general language could not, without an entire disregard of the force of words, be held to be a *special* enumeration or provision in the sense of the tariff, nor is it apprehended that this court would have deemed the general expressions just quoted sufficient for the purpose mentioned if the similitude clause had been extended to everything not "*specially enumerated or provided for.*"

The court below gave the *same effect* to the words "not specially enumerated or provided for in this act" as, ordinarily, belongs to the words "not enumerated or provided for in this act."

*Solomon* v. *Arthur* (102 U. S., 212) does not appear to have any particular bearing on this case. The reasoning of the court in that case can have no application to the different conditions of this case. In that case the merchandise in question was held dutiable under the provision of the act June 30, 1864, which laid a tax of 50 per cent. ad valorem "on all manufactures of silk or of which silk is the component part of chief value, not otherwise provided for," and that it was not dutiable under provisions of previous laws imposing a tax on "manufactures composed of mixed materials, in part of cotton, silk, wool, or worsted, or flax," as being thereby otherwise provided for.

But as the merchandise in question was not otherwise provided for in the act of 1864, and as, furthermore, it was the intention of Congress that that act should be operative without interfering with the previous acts, there remained no alternative to assessing the duty under the act of 1864.

As we have said, it is difficult to see how the

reasoning in *Solomon* v. *Arthur* bears on the case in hand.

In determining the questions raised on the appeal of the defendants in error, the Secretary of the Treasury gives due effect to the word "specially" in the wool clause, by holding that—

> In cases where the merchandise is composed in part of wool, the hair of the alpaca, goat, or other animal, and does not fall within the *specific* provisions for women's and children's dress-goods, coat-linings, Italian cloths, and goods of like description in paragraph 365 (T. I. new) it should be classified for duty under the provisions therefor in paragraph 362 or 363 of the tariff, and not under paragraph 365, as aforesaid. * * * In the present case, it being understood that the merchandise is composed in part of wool, and does not fall within *the specific* provisions of paragraph 365, it is dutiable at the rate assessed under T. I. new 362, and your assessment of duty is accordingly affirmed.

If, now, we apply the rule of the court below to the silk clause as against the woolen, for the rule must work both ways on the same words, *neither clause can have effect in the case of a fabric of wool and silk where the latter is the component of chief value, for each clause must neutralize the other.*

To avoid this difficulty the court below *arbitrarily assumes*, on the supposed authority of *Solomon* v. *Arthur*, that Congress intended that in the case supposed a duty of 50 per cent. only should be levied.

On the other hand, we say that Congress, by using the words "all manufactures of wool *of every description*," has manifested a purpose to enforce the wool clause as to all fabrics of wool, whether mixed with silk, in any proportion, or not, where they are not *specially* enumerated or provided for in the act.

These words "*of every description*" do not appear in the silk clause. What effect, then, is to be given them in the wool clause if they should not be understood to mean that in no case can a fabric of silk and wool, "not specially enumerated and provided for in this act," in which the silk is of chief value be classified under the silk clause?

But, supposing the words "*of every description*" are not to be allowed to give this pre-eminence of the wool clause over the silk, then, applying the construction that *neither clause is a special enumeration or provision as to the other*, we produce a concurrence or co-ordination between the two clauses which brings them under the provision of section 2499 of the act March 3, 1883 (22 Stat., 419), that "if two or more rates of duty

should be applicable to any imported article it shall be classified for duty under the highest of such rates."

It is under this latter provision that the Treasury Department instructs collectors of customs to assess duties on manufactures of silk and wool of which the component of chief value is silk.

It is respectfully submitted that the judgment should be reversed.

WM. A. MAURY,
*Assistant Attorney-General.*

No. 148 October Term, 1889

IN THE

# Supreme Court of the United States

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**JOHN F. HARTRANFT, Collector of Customs for the District of Philadelphia**

*Plaintiff in Error*

*vs.*

**CHARLES H. MEYER and JOSEPH R. DICKINSON trading as MEYER & DICKINSON**

*Defendants in Error*

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Error to the Circuit Court of the United States for the Eastern District of Pennsylvania

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## BRIEF FOR DEFENDANTS IN ERROR

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FRANK P. PRICHARD

*for Defendants in Error*

(O 31)

IN THE

# Supreme Court of the United States.

October Term, 1889. No. 148.

JOHN F. HARTRANFT, COLLECTOR, ETC.,
*Plaintiff in Error and Defendant Below,*

*vs.*

CHARLES H. MEYER AND JOSEPH R. DICKINSON,
TRADING AS MEYER AND DICKINSON,
*Defendants in Error and Plaintiff's Below.*

**Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.**

## BRIEF FOR DEFENDANTS IN ERROR.

The importation in the present case consisted of certain cloth known as "matelasse cloth," composed of silk and wool, silk being the material of chief value. The importer claimed that it was duitable as merchandise of which "silk is the component material of chief value." The Collector assessed duty on it as a manufacture "made wholly or in part of wool." The two sections of the Tariff Act, of March 3, 1883, under which the question arose are as follows:

Section 2,502, Schedule K. "Woolen cloths, woolen shawls, and "all manufactures of wool of every description made wholly or in part "of wool not specially enumerated or provided for in this Act, valued at "not exceeding eighty cents per pound, thirty-five cents per pound and "thirty-five per centum ad valorum; valued at about eighty cents per "pound, thirty-five cents per pound, and in addition thereto forty per "centum ad valorum."

Section 2,502, Schedule L. "On all goods, wares and merchandise "not specially enumerated or provided for in this act made of silk, or "of which silk is the component material of chief value fifty per centum "ad valorum."

The wool schedule while it imposes a duty on all manufactures of wool made wholly or in part of wool has the qualification "not specially enumerated or provided for in "this Act."

The silk schedule which follows it does specially provide for all goods of which silk is the component material of chief value.

Had the silk schedule simply provided for goods manufactured wholly or in part of silk, it would have been as general as the wool schedule, and there would have been some room for the Government's contention that the two clauses were in conflict. But when Congress prevented any possible misconstruction by specially providing in the silk schedule that as regards goods of mixed material the silk duty should apply whenever silk was the component material of chief value that schedule was specific and the goods coming within its provisions were specially provided for within the meaning of the exception to the wool schedule. It is sufficient on this point to refer to the case of

*Solomon* vs. *Arthur*, 102 U. S., 208.

In that case the two clauses were "Manufactures com-"posed of mixed materials, in part of cotton, silk, wool or "worsted, hemp, jute or flax," thirty-five per cent., and "All manufactures of silk, or of which silk is the compo-"nent material of chief value," fifty per cent. The Court (Mr. Justice Bradley, delivering the opinion) says, "It is observable

"that the description of 'manufactures made of mixed ma-
"'terials, in part of cotton, silk,' etc., is more general than
"that of 'manufactures of which silk is the component part
"'of chief value.' Logically the two phrases standing to-
"gether in the same act or system of laws, would be related
"as follows: 'Goods made of mixed materials, cotton, silk,
"'etc., shall pay a duty of thirty-five per cent; *but if* silk is
"'the component part of chief value, they shall pay a duty of
"'fifty per cent.'"

Applying this rule of construction to the present Act, the two clauses should be read: manufactures composed in part of wool, thirty-five cents per pound, and forty per centum ad valorem, *but if* silk is the component material of chief value, they shall pay a duty of fifty per centum ad valorem.

If, as has been argued, there is no conflict between the wool and the silk schedules and the matelasse cloth is within the latter only, the judgment of the Court below must be affirmed on this ground. If, however, the Court should be of opinion that the two schedules quoted cannot be reconciled then recourse must be had to a general clause of the Tariff Act which provides for non-enumerated articles and articles included within more than one classification. This general clause is Section 2,499, which, as amended by the Act of March 3, 1883, reads as follows:

Section 2,499. "There shall be levied, collected and paid on each and every non-enumerated article which bears a similitude, either in material, quality, texture or the use to which it may be applied, to any article enumerated in this title as chargeable with duty, the same rate of duty which is levied and charged on the enumerated article which it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates are chargeable, there shall be levied, collected and paid on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest duty; *and on all articles manufactured from two or more materials the duty*

*shall be assessed at the highest rates at which the component material of chief value may be chargeable.* If two or more rates of duty should be applicable to any imported article it shall be classified for duty under the highest of such rates; provided, that non-enumerated articles similar in material and quality and texture, and the use to which they may be applied, to articles on the free list, and in the manufacture of which no dutiable materials are used, shall be free."

It will be seen that by the express language of this section any conflict as to the rate of duty of merchandise, arising from the fact that it is composed of two materials liable to different rates of duty, is settled by imposing the duty to which the component material of chief value is liable, and as in the present case the component material of chief value was silk, while the Collector imposed the wool duty the judgment of the Court below must be affirmed. This would seem almost too clear for argument. The Government, however, contends that inasmuch as Section 2,499 also provides that where two or more rates of duty are applicable the article must be classified for duty under the highest rate, the wool duty which is higher than the silk duty must be imposed.

Such construction of the section is not only at variance with its language as found in the Act of 1883, but, as appears by a comparison of that language with the original language of the section in the Revised Statutes, it is directly in conflict with the manifest intention of Congress. The section as originally enacted in the Revised Statutes reads as follows:

Section 2,499. "There shall be levied, collected and paid on each and every non-enumerated article which bears a similitude, either in material, quality, texture or the use to which it may be applied, to any article enumerated in this title as chargeable with duty, the same rate of duty which is levied and charged on the enumerated article which it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates are chargeable, there shall be levied, collected and paid on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest duty; *and on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable.*"

By the Act of March 3, 1883, the part quoted in italics was amended so that it reads:

"And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component material of chief value may be chargeable. If two or more rates of duty should be applicable to any imported article it shall be classified for duty under the highest of such rates." (See the amended section quoted in full on page 3 of this brief.)

It will be seen that as originally passed the section provided that where an article was manufactured from two or more materials, the duty should be assessed at the highest rates at which any of its component parts might be chargeable, and it made no provision for cases in which a specific article might have different rates of duty imposed upon it by different sections of the Act. The Act of March 3, 1883, amended it in two particulars, viz: First, as to articles composed of two or more materials, it established the more equitable rule that "The duty shall be assessed at the high-"est rates at which the component material of chief value "may be chargeable." Second, as to specific articles having different rates of duty, imposed by different sections, it provided that "If two or more rates of duty should be ap-"plicable to any imported article, it shall be classified for "duty under the highest of such rates."

It is clear that by the sentence last quoted Congress did not intend that where an article was composed of two or more materials, it should be classified under the material bearing the highest rate of duty, irrespective of the proportion of such material, since this would be in direct opposition to the preceding clause, which declared that in such cases the rate should be that of the component material of chief value. Such a construction would also revive and renew the provision of the old law, by which the duty was assessable at the highest rate at which any of the component parts were chargeable; a provision which was expressly altered in the present Act by making the duty assessable at the rate at which the component material of chief value is chargeable. A careful reading of Section 2,499, in the new

Act and a comparison with the same section as it existed in the old Act will show that the object of the clause "If two "or more rates of duty should be applicable to any imported "article it shall be classified for duty under the highest of "such rates" was not to reach articles dutiable under general clauses relating to the different materials which entered into their composition, but to reach articles on which two rates of tariff had been inadvertently imposed by the Act. No provision had been made for such a case under the old law and questions were constantly arising in consequence. See for example, the case of *Victor* vs. *Arthur*, 104 U. S., 498. How necessary such a provision is under the new law, may be illustrated by the single example of manufactures of copper, which, by clause 186, of the metal schedule, are subjected to a duty of thirty-five per cent. and by clause 216, of the same schedule, to a duty of forty-five per cent.

It is submitted, therefore, that wherever the rate of duty depends upon the material of which the article is composed and the conflict is between two general clauses of the act imposing duty according to component material, the rate is fixed by Section 2,499, according to the component material of chief value and that the clause of that section relating to two or more rates of duty does not apply to such a case but to the case of an article inadvertently subjected to two rates of duty under specific clauses of the Act. Such a construction gives effect to the whole of Section 2,499, and harmonizes its various provisions. The construction claimed by the Government entirely nullifies the clause relating to articles composed of two or more materials, and ignores the amendment in that clause made in the Act of 1883. It is submitted that of the two constructions that one should be adopted which will give effect to the whole section and carry out the manifest intention of its framers.

FRANK P. PRICHARD,
*Attorney for Defendants in Error.*